



Foreign and Commonwealth Office

London SW1A 2AH

21 May 1980

Prime Minister  
Paul  
Dear Michael,

The Community and British Coal

The Prime Minister enquired about the validity of Chancellor Schmidt's claim in the course of a discussion at Chequers on 28 March that under the terms of the Treaty of Paris, all British coal was Community coal just as all German or French coal belonged to the Community.

Chancellor Schmidt's statement does not accord with the legal position or the facts.

The Treaty of Paris does not in any way compromise our "ownership" of our own coal. There is nothing in the Treaties that makes coal a Community resource.

The Treaty of Paris does limit actions by member states on coal in some respects, essentially in order to assure the operation of a relatively free market for coal (its provisions are broadly parallel to the free market provisions in the Treaty of Rome). The Treaty bans state aids, subsidies and restrictive practices tending to collusive sharing or exploitation of markets. It also provides for Community action over a wide field of activity in the coal industry, including investment in the coal industry, production, wages and movement of labour, transport charges and commercial relations with third countries. Member states however remain free to decide the rate at which they exploit their coal reserves and to whom they sell their coal mined within their territories.

The attached note sets out the background in greater detail.

Copies of this letter go to Bill Burroughs (Dept of Energy), Garth Waters (MAFF) and David Wright (Cabinet Office).

Yours etc

Paul

(P Lever)  
Private Secretary

M O' D B Alexander Esq  
10 Downing Street  
LONDON



THE COMMUNITY AND BRITISH COAL

1. This note sets out some of the background to Chancellor Schmidt's comment that "British coal is Community coal".

Scope of the ECSC

2. The aims of the European Coal and Steel Community, as set out in the Treaty of Paris which established it in 1951, are to promote economic expansion, growth of employment, a rising standard of living and the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and avoiding the creation of deep and lasting disturbances in Member States' economies. To attain these ends, the Treaty provides for the abolition of:-

- (a) important export duties and quantitative restrictions (or charges having the same effect) on trade in coal and steel between Member States;
- (b) discrimination by producers in prices, delivery terms or transport rates, and any measures which hamper the buyer in the free choice of supplier;
- (c) State aids, subsidies or special charges;
- (d) restrictive practices tending towards the collusive sharing or exploitation of markets.

The Treaty also provides for action by the Community over a wide field of activity in the coal industry, including investment, production, wages and movement of labour, transport charges and commercial relations with non-Member countries.

3. The main principles on coal pricing enshrined in the Treaty is that coal producers should compete on an equal basis. The Treaty forbids subsidies unless they are provided by the ECSC itself. In practice coal producers have been largely unable to fulfil the expectations of viability that underlay the drafting of the Treaty and Governments have been obliged to grant aid to their coal industries. Conflict with the Treaty provisions has been avoided by state subsidies being allowed as long as they are authorised by the Commission and thereby adopted as Community subsidies (this device is considered suspect by the UK Law Officers but we have not objected to it since that could make it difficult for us to pay aid to the National Coal Board). When approving subsidies the Commission has to certify that they meet the criteria laid down in the relevant Council Decision. Prices are fixed by the coal producers but have to be published so as to promote transparency. Transport charges also have to be published or notified to the Commission. The latter has powers, which it uses, to audit producers' accounts to check that prices actually charged are fair.

4. In this way the Treaty of Paris provides for a special relationship between coal producers and the Commission. It also provides that producers, workers, consumers and dealers and their associations may present any suggestions to the Commission on questions affecting them. The Commission



itself also consults Governments and the other parties concerned. The Commission conducts both short and longer term reviews on forward programmes for coal.

#### The German interest in Coal

5. We are not clear as to Chancellor Schmidt's motives in drawing this parallel with coal. Although we ourselves have been trying to press in the Community the idea that Britain's very large coal reserves are an asset for the Community, the Germans have shown little interest. If there is a change of heart, we would want to build on it to attempt to obtain more EC funds for the UK.

6. Although British coal production costs are below German levels, the addition of port and freight charges makes our list prices generally unattractive to Continental buyers. This is particularly so in the case of coking coal and the qualities that overseas buyers want are chiefly the scarce ones that are readily acceptable to BSC. Nevertheless, there has been some marginal export of steam coal (much of it at a substantial discount) mainly to French and German power stations, and this is still continuing though at a low level.

7. There is some desire on the part of the German and other Continental buyers to maintain modest supplies from the UK, chiefly for security of supply reasons, and the buyers are willing to pay small premia for this - though not our full list prices. That would no doubt change (as it did in 1974) if a severe world shortage were to develop, though this seems unlikely at present. Indeed, Chancellor Schmidt has suggested on earlier occasions that UK coal might be made available to other member states on equal terms as to our own consumers if a crisis did develop. We are looking into the possibilities but the Department of Energy's initial view is that there would be considerable difficulties.

8. There is one further context in which Chancellor Schmidt's comment may have been made. In Germany, there is an arrangement, part statutory, part contractual, whereby the electricity producers have agreed to take 33 million tonnes a year of German coal (now to be increased by 1 million tonnes year by year to 45 million tonnes) with subsidies which are financed through a statutory levy on electricity consumption and which make the German coal competitive with oil and third country coal. We have had official assurances that these subsidies are available in respect of any "Community coal" used by power stations. In practice, however, the German power stations have seemed reluctant to claim the subsidy on British coal and, though there are no grounds on which we could challenge it, the rather complex system works in such a way as to favour consumption of German coal. Consequently, we have to accept that if the National Coal Board are to secure sales, they have to sell at a substantial discount. As traditional supplies to several of the German power stations, they have good relations with them and have managed to maintain a modest trade - though one which has had to fluctuate in recent years according to availability and relative world prices.



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